[Cite as *State v. Young*, 2016-Ohio-3165.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99752

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GEORGE YOUNG

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-12-566461
Application for Reopening
Motion No. 495294

RELEASE DATE: May 25, 2016

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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SEAN C. GALLAGHER, J.:

{¶1} On April 13, 2016, the applicant, George Young, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's judgment in *State v. Young*, 8th Dist. Cuyahoga No. 99752, 2014-Ohio-1055, in which this court affirmed Young's convictions and sentences for felonious assault and improperly discharging a firearm into a habitation, all with attendant firearm specifications.[1] Young maintains that his appellate counsel should have argued (1) that the trial court erred in denying his motion for acquittal for lack of sufficient evidence, (2) that the prosecutor used Young's post-arrest silence to suggest his guilt, and (3) the police questioned him without

advising him of his *Miranda* rights.[2] On April 20, 2016, the state of Ohio filed its brief in opposition. On May 11, 2016, Young filed a reply brief. For the following reasons, this court denies the application to reopen.

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[1]In August 2012, Young's vehicle pulled into a yard in which there was a party. When a disagreement developed, someone in the vehicle pulled out a pistol and shot three people. The grand jury indicted Young on six counts of felonious assault and one count of improperly discharging a firearm into a habitation, all with one-, three-, and five-year firearm specifications. Witnesses identified Young as the shooter. Young testified that his coworker was driving his car and shot the victims. The jury convicted Young on all counts. The trial judge merged the felonious assault charges into one count for each victim and sentenced Young to 32 years in prison.

[2]Young's appellate counsel made the following arguments: (1) The guilty verdict was not supported by sufficient evidence, (2) the verdict was against the manifest weight of the evidence, (3) the trial court erred by not allowing Young to present surrebuttal evidence on whether the police gave him his *Miranda* warnings, (4) the trial court erred in giving the jury the flight-of-the-defendant instruction, (5) trial counsel was ineffective for not making an opening statement, (6) the trial court erred in imposing consecutive sentences for the firearm specifications, (7) the trial court erred in

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. The April 2016 application was filed approximately two years after this court's decision. Thus, it is untimely on its face. In an effort to establish good cause, Young argues that he did not have ready access to a law library or other legal materials. However, the courts have repeatedly rejected the claim that limited access to legal materials states good cause for untimely filing. Prison riots, lockdowns, and other library limitations have been rejected as constituting good cause. *State v. Tucker*, 73 Ohio St.3d 152, 1995-Ohio-2, 652 N.E.2d 720; *State v. Kaszas,* 8th Dist. Cuyahoga Nos. 72546 and 72547, 1998 WL 598530 (Sept. 10, 1998), *reopening disallowed*, 2000 WL 1195676 (Aug. 14, 2000); and *State v. Crain,* 8th Dist. Cuyahoga Nos. 95012, 95013, 95014, and 95015, 2011-Ohio-1924, *reopening disallowed,* 2012-Ohio-1340. Untimeliness alone is sufficient to dismiss the application.

{¶3} Young also complains that his appellate counsel abandoned him and did not notify him of the court's decision. In *State v. Lamar*, 8th Dist. Cuyahoga No. 49551, 1985 Ohio App. LEXIS 7284 (Oct. 15, 1985), *reopening disallowed* (Nov. 15, 1995), Motion No. 263398, this court held that lack of communication with appellate counsel did not show good cause. Similarly in *State v. White*,

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imposing consecutive sentences on the felonious assault counts, (8) the trial court erred in not merging all of the felonious assault counts, and (9) the trial court erred by failing to notify him of the possible consequences for failing to pay court costs.

8th Dist. Cuyahoga No. 57944, 1991 Ohio App. LEXIS 357 (Jan. 31, 1991), *reopening disallowed* (Oct. 19, 1994), Motion No. 249174, and *State v. Allen*, 8th Dist. Cuyahoga No. 65806, 1994 Ohio App. LEXIS 4956 (Nov. 3, 1994), *reopening disallowed* (July 8, 1996), Motion No. 267054, this court rejected reliance on counsel as showing good cause. In *State v. Rios*, 75 Ohio App.3d 288, 599 N.E.2d 374 (8th Dist.1991), *reopening disallowed* (Sept. 18, 1995), Motion No. 266129, Rios maintained that the untimely filing of his application for reopening was primarily caused by the ineffective assistance of appellate counsel; again, this court rejected that excuse.

{¶4} Indeed, the Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. In those cases, the applicants argued that after the court of appeals decided their cases, their appellate lawyers continued to represent them, and their appellate lawyers could not be expected to raise their own incompetence. Although the Supreme Court agreed with this latter principle, it rejected the argument that continued representation provided good cause. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court then reaffirmed the principle that lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B). Thus, Young failed to establish good cause for filing his application almost two years after the deadline.

{¶5} Accordingly, this court denies the application to reopen.

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SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
ANITA LASTER MAYS, J., CONCUR